IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.Rev.Pet.No. 1852 of 2003(C)

CRA.135/1997 of ADDL.SESSIONS COURT, PATHANAMTHITTA
CC.253/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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REVN. PETITIONER: APPELLANT/ACCUSED

R.MOHANKUMAR, TREAD RUBBER DEALER,
ORIENTAL AGENCY, LMS JUNCTION,
ATTINGAL.

BY ADV. SRI.R.ANILKUMAR

RESPONDENTS: RESPONDENT/RESPONDENT/COMPLAINANT

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. GEORGE MATHEW, GEORGE BENGLOW,
PADUKOTTUNGAL MURI, PANDALAM,
THEKKEKARA VILLAGE, (MANAGING PARTNER,
EMIL RUBBER PRODUCTS)

BY ADV. SRI.PHILIP M.VARUGHESE
R2 BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl. R.P. No.1852 2003

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Dated this the 28th day of September, 2007.

ORDER

In this Revision filed under Section 397 read with Sec.401 Cr.P.C. the petitioner who was the accused in C.C. No.253 of 1993 on the file of the Judicial First Class Magistrate, Adoor challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (herinafter referred to as "the Act").

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts

have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the second respondent complainant by way of compensation under Sec. 357(3) Cr.P.C. a sum of Rs.1,38,000/- (Rupees one lakh thirty eight thousand only) within six months from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V.RAMKUMAR
Judge

pms